

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MACKENNETH ORTIZ,)	
)	
Plaintiff,)	2:22-cv-928-NR-PLD
)	
v.)	
)	
LEE ESTOCK, et al.,)	
)	
Defendants.)	

ORDER ADOPTING REPORT & RECOMMENDATION (ECF 31)

Plaintiff MacKenneth Ortiz is an inmate presently incarcerated at the State Correctional Institute at Houtzdale. Mr. Ortiz filed a complaint in the Court of Common Pleas of Indiana County in April 2021, challenging the treatment he received at the prison and claiming that he was subjected to retaliation. Mr. Ortiz names three Defendants in his complaint: (1) Lee Estock, the Warden of SCI Pine Grove, which is where he was previously incarcerated; (2) Deputy Superintendent Yingling; and (3) Wellpath, a medical provider.

Wellpath removed the action to this Court based on federal question jurisdiction. In response, Mr. Ortiz filed a “motion to dismiss,” which was actually a request for remand. ECF 19. Mr. Ortiz supplemented that motion at ECF 29.

Before the Court is Magistrate Judge Patricia L. Dodge’s Report and Recommendation (ECF 31), recommending that the Court deny Mr. Ortiz’s motion. Mr. Ortiz objects to Judge Dodge’s R&R in a document that he styled as a “Notice of Appeal.” ECF 37.

After carefully considering the record and upon a *de novo* review of the R&R, the Court overrules Mr. Ortiz’s objections, and adopts Judge Dodge’s R&R as the opinion of the Court. *See, e.g., United States v. Raddatz*, 447 U.S. 667, 676 (1980) (“[I]n providing for a ‘de novo determination’ ... Congress intended to permit whatever

reliance a district judge, in the exercise of sound judicial discretion, chose to place on a magistrate's proposed findings and recommendations." (cleaned up)); *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) ("[I]t must be assumed that the normal practice of the district judge is to give some reasoned consideration to the magistrate's report before adopting it as the decision of the court. When a district court does accept the Magistrate's report, that is a judicial act, and represents the district court's considered judgment." (cleaned up)).

Mr. Ortiz primarily bases his objection on the claim that there is no "Federal Question" present in his case, and therefore this Court lacks jurisdiction. ECF 37, pp. 1-2. But while making this objection, Mr. Ortiz claims that he was retaliated against for engaging in conduct protected by the United States Constitution, thereby acknowledging the basis for federal court jurisdiction. *Id.* at p. 3.

Therefore, this **19th day of October, 2022**, it is **ORDERED** that Mr. Ortiz's motion (ECF 19; ECF 29) is **DENIED**. The R&R is adopted as the opinion of the Court.

BY THE COURT:

/s/ J. Nicholas Ranjan

United States District Judge